

THIS DECISION IS NOT
CITABLE AS PRECEDENT
OF THE TTAB

Mailed:
December 17, 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Miriam Jacob and Norma Sawdy

Serial No. 75624180

Martin R. Greenstein of Techmark for applicants.

Michael W. Baird, Trademark Examining Attorney, Law Office
116 (Meryl L. Hershkowitz, Managing Attorney).

Before Quinn, Walters and Chapman, Administrative Trademark
Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application was filed by Miriam Jacob and Norma
Sawdy to register the mark US ANGELS for "children's
clothing, namely, dresses, wedding gowns, shirts, skirts,
pants, jackets, vests, coats, sweaters, shorts and
pajamas."¹

The trademark examining attorney refused registration
on the ground that applicants' mark, if applied to

¹ Application Serial No. 75624180, filed January 20, 1999, based
on an allegation of a bona fide intention to use the mark in
commerce.

applicants' goods, would so resemble the previously registered mark AMERICAN ANGEL for "shoes"² as to be likely to cause confusion under Section 2(d) of the Trademark Act. The examining attorney also made final a requirement to disclaim the designation "US" because, in the examining attorney's view, the designation is primarily geographically descriptive.

When the refusal was made final, applicant appealed. Applicants and the examining attorney filed briefs. An oral hearing was not requested.

Applicants, in appealing the refusal, first assert that the disclaimer requirement is at the crux of the appeal, contending that the term "US" in their mark means "We" as in "We Angels," or "Wee" as in "Wee Angels," "describing the angelic nature and look of the young girls in their fancy dresses." (Brief, p. 3). Applicants point to the uses of "Us" on their website which, according to applicants, indicate "the pronoun and not the abbreviation of 'United States'....the letters here are not an abbreviation, but rather a common dictionary word 'us' being used for its ordinary dictionary meaning, in a fanciful, child-like, deliberately grammatically incorrect

² Registration No. 2498522, issued October 16, 2001. The word "American" is disclaimed apart from the mark.

manner. Nothing suggests a geographic abbreviation...." (Brief, p. 4). Once applicants' mark is viewed as "Us Angels," then no disclaimer is required and, applicants further contend, there is no likelihood of confusion with the cited mark. Even in the event that "US" is viewed as an abbreviation for "United States," applicants argue that the marks US ANGELS and AMERICAN ANGEL are sufficiently different that, when applied to different goods, confusion would be unlikely to occur among consumers. In support of their arguments, applicants submitted a dictionary definition of the term "us," copies of seven third-party registrations of "ANGELS" marks in the clothing field, and printouts of pages from applicants' website.³

³ Applicants, in their response filed October 7, 2002, listed other third-party registrations of "US" (or "U.S.") and "AMERICAN" formative marks that have coexisted on the register despite the fact, according to applicants, that the registrations covered similar goods and/or services. Inasmuch as applicants merely listed the marks and the registration numbers therefor, the examining attorney, in his responsive Office action, objected to the evidence because copies of the registrations were not furnished, citing *In re Duofold*, 184 USPQ 638 (TTAB 1984). The objection is maintained in the examining attorney's appeal brief. (Brief, pp. 8-9). Applicants, in their reply brief, invoke equity, citing to the Office's computerized database and "today's electronic era" in which such registrations are "readily available to all parties and the Board from their desktop at the click of a mouse." Accordingly, applicants argue, the third-party registrations should be considered. The Board does not take judicial notice of third-party registrations of marks. *In re Wada*, 48 USPQ2d 1689, 1689 n. 2 (TTAB 1998), *aff'd*, 194 F.3d 1297, 52 USPQ2d 1539 (Fed. Cir. 1999). The proper procedure for introducing third-party registrations is clear. See TBMP §1208.02 (2d ed. rev. 2004). Because applicants did not properly make these registrations of record, the examining attorney's

The examining attorney maintains that a disclaimer of "US" apart from applicants' mark US ANGELS is required because "US" is an abbreviation for "United States," said term being primarily geographically descriptive when applied to applicants' goods. In this connection, the examining attorney points out that the original drawing of the mark showed U.S. ANGELS, and that he allowed an amended drawing to show the mark in its present form as US ANGELS. Inasmuch as purchasers would perceive the "US" portion of applicants' mark as an abbreviation for "United States," the examining attorney goes on to contend that applicants' mark and the cited mark AMERICAN ANGEL convey similar overall commercial impressions. The examining attorney also asserts that the goods are "articles of clothing, target the same consumers, and travel through the same channels of trade." (Brief, p. 10). In support of the refusal, the examining attorney introduced copies of dictionary listings of "U.S." and "American," and copies of excerpts of catalogs of third parties.

We first turn to the disclaimer requirement. Section 6(a) of the Trademark Act provides that the Office may

objection is sustained, and this evidence has not been considered in making our decision. We hasten to add, however, that even if considered, the evidence would not be persuasive of a different result on the merits herein.

require an applicant to disclaim an unregistrable component of a mark otherwise registrable. In the present case, the examining attorney's position is that "US" is a geographically descriptive term that must be disclaimed. In order for a term to be primarily geographically descriptive under Section 2(e)(2), it is necessary to show that (i) the term is the name of a place known generally to the public, and that (ii) the public would make a goods/place association, that is, believe that the goods for which the term is sought to be registered originate in that place. In re Societe Generale des Eaux Minerals de Vittel S.A., 824 F.2d 957, 3 USPQ2d 1450 (Fed. Cir. 1987). Where there is no genuine issue that the geographical significance of a term is its primary significance and where the geographical place is neither obscure nor remote, a public association of the goods with the place may ordinarily be presumed from the fact that the applicant's own goods come from the geographical place named in the mark. In re Handler Fenton Westerns, Inc., 214 USPQ 848 (TTAB 1982).

It hardly needs to be said that "US" is universally known as an abbreviation for the United States of America. In *The American Heritage Dictionary of the English Language* (3d ed. 1992), the following listing is shown for "U.S.":

"U.S. or US abbreviation....3. United States." We find, therefore, that the geographic significance of "US" is its primary significance, and that, obviously, the United States is neither obscure nor remote. *United States Blind Stitch Machine Corp. v. Union Special Machine Co.*, 287 F.Supp. 468, 159 USPQ 637 (S.D.N.Y. 1968); and *In re U.S. Cargo Inc.*, 49 USPQ2d 1702 (TTAB 1998). Further, applicants are located in the United States and, as shown by their website, the goods originate in this country. Accordingly, we presume a public association of applicants' goods with the United States.

In making the determination that "US" in applicants' mark is geographically descriptive, we have carefully considered the printouts of pages from applicants' website. The website shows a mix of uses, admittedly some of the pronoun "us," but others that clearly are geographic references to the United States. For example, the top of the website reads "Us Angels" with a description of applicants and their products under the heading "About us." But the remaining uses identify applicants' trade name as "U.S. Angels Inc." or "US Angels" (as in "US Angels Special Occasion Dresses" and "US Angels Bridal Collection"). The following paragraph, describing applicants' origins, is revealing on this point:

Little Angels Born In The USA initially began as a small dynamic company specializing in flower girl dresses. Our success with elegant dresses at affordable prices soon lead us to our expansion as "US Angels". We now have positioned ourselves in both the children's wear and bridal gown market as premium manufacturers of fine special occasion dresses.

We find that "US," as it appears in applicants' mark, will be perceived as primarily geographically descriptive; this finding is buttressed by applicants' own uses, not to mention the original drawing that depicted the mark as U.S. ANGELS. In view thereof, a disclaimer of the primarily geographically descriptive designation "US" is warranted. The disclaimer requirement is affirmed.

Turning next to the issue of likelihood of confusion, our determination of this issue is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also: *In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). See also: *In*

re Dixie Restaurants Inc., 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

Although the "AMERICAN" and "US" portions are different in sound and appearance, the marks AMERICAN ANGEL and US ANGELS as a whole are similarly constructed, that is, both begin with a geographical reference to the United States followed by the virtually identical terms "ANGEL" and "ANGELS." Moreover, the marks are virtually identical in meaning.

As discussed above in connection with the disclaimer requirement, we find it likely that consumers will view the "US" portion of applicants' mark as an abbreviation for "United States" as opposed to the pronoun "us." In addition to the universally understood meaning of the abbreviation "US," the likelihood of this perception is increased due to the grammatically incorrect nature of the phrase "us angels" (as a play on "we angels" or "wee angels"). The examining attorney submitted a dictionary listing of the term "American" showing it defined, in relevant part, as "of or relating to the United States of America or its people, language, or culture." *The American Heritage Dictionary of the English Language* (3d ed. 1992). The similarity in connotation of the marks AMERICAN ANGEL and US ANGELS outweighs the differences in sound and

appearance. In sum, the marks AMERICAN ANGEL and US ANGELS, when considered in their entireties, engender similar overall commercial impressions.

Insofar as the goods are concerned, it is not necessary that the respective goods be similar or competitive, or even that they move in the same channels of trade to support a holding of likelihood of confusion. It is sufficient that the respective goods are related in some manner, and/or that the conditions and activities surrounding the marketing of the goods are such that they would or could be encountered by the same persons under circumstances that could, because of the similarity of the marks, give rise to the mistaken belief that they originate from the same producer. In re International Telephone & Telegraph Corp., 197 USPQ 910, 911 (TTAB 1978).

We acknowledge that there is no per se rule governing likelihood of confusion in cases involving clothing items. In re British Bulldog, Ltd., 224 USPQ 854 (TTAB 1984). At the same time, we note that likelihood of confusion has been found in prior cases where it was determined that goods of the same kind as or analogous to those involved herein are related for the purpose of deciding likelihood of confusion issues. See Cambridge Rubber Co. v. Cluett,

Peabody & Co., Inc., 286 F.2d 623, 128 USPQ 549 (CCPA 1961) [WINTER CARNIVAL for women's boots and men's and boy's underwear]; General Shoe Co. v. Hollywood-Maxwell Co., 277 F.2d 169, 125 USPQ 443 (CCPA 1960) [INGENUE for shoes and INGENUE for brassieres]; Avon Shoe Co. v. David Crystal, Inc., 279 F.2d 607, 125 USPQ 607 (2d Cir. 1960) [HAYMAKERS for women's shoes and HAYMAKER for women's sportswear, including blouses, shirts, and dresses]; In re Keller, Heumann & Thompson Co., 81 F.2d 399, 28 USPQ 221 (CCPA 1936) [TIMELY for men's shoes and TIMELY for men's suits, topcoats and overcoats]; Villager, Inc. v. Dial Shoe Co., 256 F.Supp. 694, 150 USPQ 528 (E.D.Pa. 1966) [THE VILLAGER and JUNIOR VILLAGER for young women's wearing apparel, including inter alia, dresses, skirts, blouses, slacks, jackets, and MISS VILLAGER for shoes]; In re Pix of America, Inc., 225 USPQ 691 (TTAB 1985) [NEWPORTS for women's shoes and NEWPORT for outer shirts]; and United States Shoes Corp. v. Oxford Industries, Inc., 165 USPQ 86 (TTAB 1970) [COBBIES BY COS COB for women's and girl's shirt-shifts and COBBIES for shoes].

As the Board stated in In re Melville Corp., 18 USPQ2d 1386, 1388 (TTAB 1991):

In this case we have women's shoes, on the one hand, and women's pants, blouses, shorts and jackets, on the

other. Despite applicants' argument to the contrary, we believe that these goods are related. A woman's ensemble, which may consist of a coordinated set of pants, a blouse and a jacket, is incomplete without a pair of shoes that match or contrast therewith. Such goods are frequently purchased in a single shopping expedition. When shopping for shoes, a purchaser is usually looking for a shoe style or color to wear with a particular outfit. The items sold by applicant and registrant are considered to be complementary goods. They may be found in the same stores, albeit in different departments.

Notwithstanding the specific differences between shoes and clothing items, we find them to be sufficiently related for the same reasons quoted above, that, when sold under similar marks, purchasers are likely to be confused. As shown by the catalog evidence submitted by the examining attorney, shoes and clothing are sold in the same channels of trade to the same classes of purchasers. These purchasers would include ordinary consumers who, due to the normal fallibility of human memory over time, retain a general rather than a specific impression of trademarks encountered in the marketplace.

The third-party registrations of marks, all of which include "ANGELS" as a part thereof, do not compel a different result. This evidence does not establish that the registered marks are in use or that the public is

familiar with them. AMF Inc. v. American Leisure Products, Inc., 474 F.2d 1403, 177 USPQ 268 (CCPA 1973); and Lilly Pulitzer, Inc. v. Lilli Ann Corp., 376 F.2d 324, 153 USPQ 406 (CCPA 1967). Further, all of the cited marks (HEAVEN'S ANGELS, ASPHALT ANGELS, ELVES ANGELS, EARTH ANGELS, SLEEPY ANGELS, TIRED ANGELS, and ANGELS SO SWEET) are different from the ones involved herein in that none include a geographical designation for this country. In short, none of the marks is as close to registrant's mark as is applicants' mark.

We conclude that consumers familiar with registrant's shoes sold under its mark AMERICAN ANGEL would be likely to believe, upon encountering applicants' mark US ANGELS for children's clothing items, that the goods originated with or are somehow associated with or sponsored by the same entity.

Lastly, to the extent that any of the points raised by applicant raise a doubt about likelihood of confusion, that doubt is required to be resolved in favor of the prior registrant. In re Hyper Shoppes (Ohio), Inc., supra; and In re Martin's Famous Pastry Shoppe, Inc., 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984).

Decision: The requirement for a disclaimer of "US" apart from the mark is affirmed. The refusal to register under Section 2(d) is affirmed.

If applicants intend to appeal the affirmance of the Section 2(d) refusal, and they are willing to disclaim "US" apart from the mark, then applicants may file the disclaimer within thirty days of the date of this decision. Trademark Rule 2.142(g). In the event that the disclaimer is filed, the refusal of registration based on the disclaimer requirement will be set aside. Applicants should note that the filing of the disclaimer would not extend the time to file an appeal of this decision. The time for filing an appeal of this decision runs from the mailing date hereof.